



State of Wisconsin • DEPARTMENT OF REVENUE

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REAL ESTATE TRANSFER NEWS (RETN)

October 1999

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

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This newsletter may be found on the Internet at <http://www.dor.state.wi.us/ust/retn.html>

1Q. Does exemption s. 77.25(7), Stats. apply to a transfer by a subsidiary corporation to its parent when its parent is a limited liability company?

- A.** Exempt. If all the stock of the corporation is owned by the limited liability company (LLC), then the subsidiary corporation could convey its real estate assets "to its parent for no consideration, nominal consideration or in sole consideration of cancellation, surrender or transfer of capital stock between parent and subsidiary corporation" and be exempt from fee. Section 77.25(7) is worded "subsidiary corporation" and "parent" which would indicate parent could be a corporation or LLC. The Gottfried, Inc. v. Wisconsin Department of Revenue, Court of Appeals District II, Case No. 87-2141 stated a parent can not be an individual but must be a business entity.

Exemptions from transfer fee are to be strictly construed. Thus, if the conveyance is from the subsidiary corporation to its parent, which is a LLC and it is for no consideration, nominal consideration or in sole consideration of cancellation, surrender or transfer of capital stock between parent and subsidiary corporation, the conveyance would be exempt from fee per s. 77.25(7), Stats.

2Q. What is the Department's position as to value subject to fee on a conveyance of a vacant lot with a contract to construct a building?

- A.** The value subject to transfer fee is only the value of the real property at the time of conveyance. The improvement value would be included with the lot value only on that percentage of improvement completed at the time of conveyance. Examples:
- (1) If there is only a vacant lot with a construction contract – lot only.
 - (2) Improvement is 50% completed, lot plus 50% of the value of the improvement.
 - (3) Improvement is 100% completed, lot plus total value of the improvement.

This position is in accordance with R & R Development Group, LLC v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. 97-T-212, Decision and Order dated February 11, 1999.

3Q. What past RETN's are changed by the decision and order in Question 2, above?

A. The following RETN's questions and answers are no longer valid:

RETN February 84, Q15
RETN March 95, Q4 & Q5
RETN November 95, Q6
RETN June 96, Q18

The following RETN's questions and answers are valid or modified as follows:

RETN February 1984:

14. A has contracted with B., Construction Contractor, to build an apartment on A's property. A conveys his land to B for financing reasons. At the completion of the contract B conveys to A the land and building. Should a fee be paid on the conveyance from A to B; from B to A?

A. No, each conveyance is exempt under s. 77.25(9), Stats.

15. A has contracted with B, Construction Contractor, to build an apartment on property owned by B. B conveys land to A and simultaneously signs a construction contract with A. Is there a fee due and if so on what basis?

A. THE TRANSFER FEE IS ON THE LAND ONLY.

16. Same facts as in question 15 above, except that B does not own the property but arranges to buy it for A pursuant to the construction contract. After the apartment is built a warranty deed is presented to A by B for C, the actual seller of the property. What is the basis for the fee?

A. THE BASIS IS THE CONSIDERATION GIVEN BY A TO B FOR THE LAND AND THE CONSTRUCTED BUILDING.

RETN March 95:

6Q. How should a transfer return be completed showing both grantors being the developer/land owner and the contractor?

A. The Department would prefer two transfer returns, one for the actual land title holder and one for the improvements. Both returns would accompany the deed and two fees would be placed on that deed. The transfer return would have the same document and recording data filled in on the bottom of the form. If one return is filed, both would be listed as grantors and indicate which is land and which is improvement.

4Q. What precautions are taken by the Wisconsin Department of Revenue's property tax district offices to ensure the confidentiality of the transfer returns when authorized individuals inspect these returns?

- A.** The transfer return is confidential per s. 77.265, Stats. and authorized the following individuals outside the Wisconsin Department of Revenue to review the return:
- a. Local assessors, their agents or employees.
 - b. County property lister, treasurer and register of deeds.
 - c. Employees of governmental agencies acquiring real property for public purposes.
 - d. The Department of Workforce Development under s. 106.04, Stats.
 - e. Property owners or their agents in condemnation proceedings or in appeals of their property tax assessment.
 - f. A county may use the returns to develop a tract index if the county does not reveal the social security numbers of the buyers and sellers.
 - g. The Department of Revenue may sell information from the return about street addresses, sales prices, dates of sales and the type of conveyance instruments.

The property tax district offices follow the procedure outlined below when granting requests to inspect returns:

- a. Verify the requestor's identification. If a governmental agency, review the agency's authorization. This agency authorization should be in the form of a letter.
- b. In cases of condemnation or an appeal of an assessment:
 - 1.) If an agent, make a copy of the agreement appointing the agents.
 - 2.) If an assessment appeal, request a copy of the objection form. Call the clerk of the taxing district where the objection form has been filed.
- c. Record all forms that have been photocopied on Form 709, "Request to Examine Real Estate Transfer Returns," listing county document numbers, volume and page. Please see the attached Form 709.
- d. Persons obtaining photocopies of transfers shall write their name and date on the bottom of each copy.
- e. A subpoena to view or copy a transfer must be authorized by a judge.
- f. Persons requesting copies of their own returns through an agent must provide the agent with a limited power of attorney.

See also RETN June 1996, 9Q. for additional confidential information.